

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District <u>Southern District of California</u>	
Name (under which you were convicted): <u>DYWANE TOUSANT</u>		Docket or Case No.: <u>09CR1250-W</u>	
Place of Confinement: <u>FCI VICTORVILLE #1</u>		Prisoner No.: <u>14306-298</u>	
UNITED STATES OF AMERICA		Movant (include name under which convicted) <u>Dywane Tousant</u>	

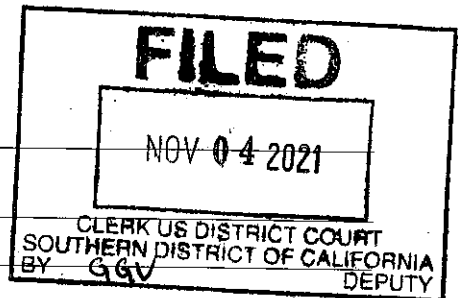
**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging:  
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA  
333 WEST Broadway, Suite 420  
SAN Diego, CA 92101

(b) Criminal docket or case number (if you know): 09CR1250-W

2. (a) Date of the judgment of conviction (if you know): 6/2/2010

(b) Date of sentencing: 5/26/2010



3. Length of sentence: 10 YEARS (120 MONTHS) WITH 15 MONTHS CONCURRENT TO  
CASE NO: SCS 225064

4. Nature of crime (all counts):

(1) 18 U.S.C § 2251 (a) and (c) SEXUAL EXPLOITATION OF A CHILD  
 (2) 18 U.S.C § 1591 (a) and (b) SEX TRAFFICKING OF CHILDREN  
 (3) 18 U.S.C. § 1594 - ATTEMPTED SEX TRAFFICKING OF CHILDREN  
 (4) 18 U.S.C. SECT. 2 - Aiding And Abetting

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

PLED Guilty To count Two (2) 18 U.S.C. § 1591 (a) and (b) SEX TRAFFICKING  
OF CHILDREN  
COUNT ONE (1) COUNT (3) COUNT (4) WERE "DROPPED" IN EXCHANGE  
FOR Guilty PLEA

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

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8. Did you appeal from the judgment of conviction?

Yes ☐No ☒

9. If you did appeal, answer the following:

(a) Name of court: N/A(b) Docket or case number (if you know): N/A(c) Result: N/A(d) Date of result (if you know): N/A(e) Citation to the case (if you know): N/A(f) Grounds raised: N/A

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A(2) Result: N/A(3) Date of result (if you know): N/A(4) Citation to the case (if you know): N/A(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A(2) Docket or case number (if you know): N/A(3) Date of filing (if you know): N/A

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(4) Nature of the proceeding: N/A(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒(7) Result: N/A(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A(2) Docket of case number (if you know): N/A(3) Date of filing (if you know): N/A(4) Nature of the proceeding: N/A(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒(7) Result: N/A(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐No ☒

(2) Second petition:

Yes ☐No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE:** INEFFECTIVE ASSISTANCE OF COUNSEL  
6TH Amendment Failure To file Notice of Appeal

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

ON THE DAY I WAS SENTENCED TO 120 MONTHS WITH 15 months concurrent to state case I ASKED Mr. Blake TO FILE A NOTICE OF APPEAL ON MY BEHALF SO THAT I CAN EXHAUST MY REMEDIES WITH THE COURTS. Mr. Blake FAILED TO ACT ON MY REQUEST. THERE IS NO NOTICE OF APPEAL ON THE DOCKET WITH REGARDS TO ME.

(b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

N/A

N/A

(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND TWO:** In effective Assistance of Counsel In Violation of 6th Amendment For Failure To Conduct Adequate mitigation Investigation

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

During THE course of THESE Proceedings From 2009 To 2010 Mr Blake Showed Bias Towards Me Because I was In Fact Guilty On My state case And Mr. Blake Automatically Assumed THAT I was A core participant. He DID NOT Look Into Anything I Requested OF Him Nor DID The Private Investigator That was ATTACHED TO Mr. Blake During THIS Matter.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

N/A

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

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**GROUND THREE: Ineffective Assistance of Counsel** In violation of 6<sup>TH</sup> Amen  
**By Misrepresentation of Plea Agreement**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim).

During Plea Negotiations <sup>MR. Blake</sup> DID NOT Explain To Me The Legal Jargon In Clear Simple Language About The TVPA or VCCE Act. Though I CAN READ And Write I'M NOT A LAWYER I HAVE NO Formal Training In Law. The Plea Agreement I Signed HAD Language I Did NOT Agree with And Mr Blake wrote A note on it And HAD Me Initial It And He kept Reassuring Me The Court would Run ~~the~~ Sentence Concurrent with my STATE Sentence.

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐ N/A

- (2) If you did not raise this issue in your direct appeal, explain why:

N/A

**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☐ N/A

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐ N/A

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐ N/A

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐ N/A

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

**GROUND FOUR: InEFFECTive Assistance of Counsel In Violation of 6th Amendment By Failure To Give Discovery**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Mr. Blake Never gave Me Discovery on THIS MATTER. When I would ASK ABOUT IT He would MAKE excuses AS TO why I could NOT HAVE Discovery which I Am Entitled To For THE Purpose of Defending My Self.

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☐

N/A

(2) If you answer to Question (c)(1) is "Yes," state:

N/A



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Type of motion or petition: N/AName and location of the court where the motion or petition was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

None Have Been Presented Reason for  
It I was In state custody And I Assumed  
Council was Doing This on direct. And  
My 2241 & 2254 Petitions went unanswered  
while In state custody.

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☒ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

~~Robert L. James~~

(b) At the arraignment and plea:

Paul W. Blake

(c) At the trial:

N/A

(d) At sentencing:

Paul W. Blake

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed:

N/A

(c) Give the length of the other sentence:

N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

THE Statute of Limitations Contained In 28 U.S.C. § 2255 Does NOT BAR THIS MOTION Because on or ABOUT May/2010 I was Sentenced By Honorable Thomas J. Whelan In The United States District Court Southern District Of California. At which Time I Explicitly Advised my Lawyer To file A Notice OF Appeal on The Sentence Imposed By THIS Court. Shortly After Sentencing I was Sent To State Prison To serve The Sentence Imposed By THAT Court, In which 15 months OF THAT Sentence was Ran Concurrent with THIS Sentence, From 6/2010 until 1/26/2021 I was In State Custody. Also I was In local Custody on This Matter Since 9/30/2008 The Date of Arrest for the Instant Offense. AT THAT Time THAT was A State Matter up until The Bind over PROCESS for Trial AFTER A preliminary Hearing.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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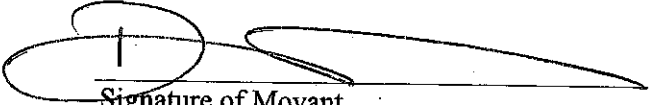
Therefore, movant asks that the Court grant the following relief:

I ASK FOR A CORRECTION OF SENTENCE OR TO SET ASIDE THIS SENTENCE  
or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion  
under 28 U.S.C. § 2255 was placed in the prison mailing system on OCTOBER 19, 2021  
(month, date, year)

Executed (signed) on 10/19/2021 (date)

  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

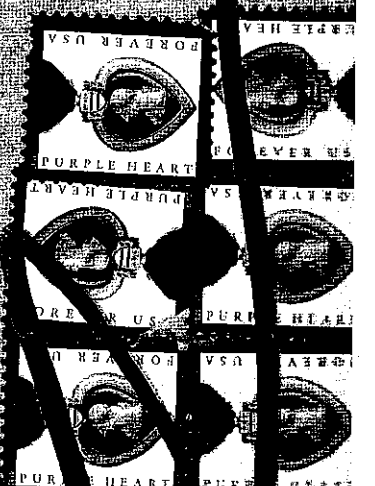


DEPARTMENT OF PROBATION & PAROLE  
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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
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Southern District of California  
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333 West Broadway, Suite 1500  
San Diego, CA 92101